

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

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|------------------------------|---|-----------------------------|
| LEXINGTON INSURANCE COMPANY, | : | CIVIL ACTION |
| | : | NO. 02-CV-4435 |
| Plaintiff, | : | (Hon. Anita B. Brody) |
| | : | |
| v. | : | |
| | : | |
| DAVID FORREST AND | : | |
| T. BEAUCLERC ROGERS IV, | : | Electronically Filed |
| | : | |
| Defendants. | : | |

**DEFENDANTS T. BEAUCLERC ROGERS IV'S AND
DAVID FORREST'S JOINDER IN THE MOTIONS TO DISMISS OF
DEFENDANTS STANLEY MUNSON AND TARLO LYONS
ON THE THEORY OF *FORUM NON CONVENIENS***

Defendants T. Beauclerc Rogers IV ("Rogers") and David Forrest ("Forrest"), respectfully join in the September 15, 2004 Motions to Dismiss of defendants Stanley Munson and Tarlo Lyons, on the theory of *forum non conveniens*.

I. INTRODUCTION AND BACKGROUND

Lexington Insurance Company ("Lexington") initiated this action in July 2002 against just two defendants, Forrest, a citizen and resident of the United Kingdom, and Rogers who lives in Gladwyne, Pennsylvania. In June 2004, Lexington filed a Second Amended and Supplemental Complaint, which added four defendants to this action: Martin Fink ("Fink"), a California resident; New Beginnings Enterprises, LLC ("New Beginnings"), the California company with whom Fink is associated; Stanley Munson ("Munson"), an English solicitor; and Tarlo Lyons ("Tarlo Lyons"), a law firm with offices in London, England, with which Munson formerly practiced. Each of the newly joined defendants, with the exception of New Beginnings,

filed a motion to dismiss, which motions are pending before this Court. Rogers and Forrest previously filed motions to dismiss on several grounds, including *forum non conveniens*, which this Court denied on March 6, 2003, when Rogers and Forrest were the only defendants. Rogers and Forrest renew their requests for dismissal and hereby join in the motions of Stanley Munson and Tarlo Lyons because the joinder of those defendants compels the conclusion that England is the appropriate forum for this dispute.

II. ARGUMENT

Both Stanley Munson and Tarlo Lyons are London-based defendants, whose alleged misconduct occurred in London, and whose potential witnesses reside in London. Their joinder reinforces the connection of this suit to England, and not to Pennsylvania, and unmistakably tips the scales in favor of dismissal on the grounds of *forum non conveniens*. Plaintiff and all defendants except Rogers¹, Fink, and New Beginnings are located in England.² The sources of proof and witnesses predominately reside in and around London, nearly all the operative events alleged took place in England between and among residents of that jurisdiction, and the only connection that Pennsylvania has to this case is that one defendant resides there.

As stated in the defendants' motions, the appropriate forum in which to litigate this action is London, England, where actions against many of the defendants already exist. Of the fifty-two (52) witnesses listed in plaintiff's initial disclosures, at least as many major witnesses are based in the United Kingdom as in the United States. The Court should consider more than Plaintiffs' witnesses, however. The majority of potential witnesses listed by both Forrest and Rogers also

¹ Rogers previously agreed to submit to the jurisdiction of the courts in London, England for purposes of this action.

reside in the United Kingdom, and both Tarlo Lyons and Stanley Munson aver that their potential witnesses reside in England. (See Tarlo Lyons Motion at 25; Stanley Munson Motion at 23). Indeed, Tarlo Lyons proposes to join additional parties (including the insurance brokers, Jardine Lloyd Thompson, and its broker Mark Drummond-Brady), all of whom are located in London. (See Tarlo Lyons Reply Br. at 21). Even Exhibit “B” to Plaintiffs’ own Brief in Opposition to Tarlo Lyons’ and Stanley Munson’s Motions to Dismiss makes clear that these UK based individuals and/or entities – either as parties or as witnesses – will be crucial to a trial of this matter with respect to all parties.

Moreover, most of the documentary evidence is located abroad and is in the control of the administrator in London (several hundred boxes of documents), and/or the London witnesses. The disputed events occurred primarily in England, the alleged damages occurred in England, and Pennsylvania has only a negligible interest, if any, in the outcome of this litigation.

² Plaintiff is an international company with a London office, which office negotiated the insurance agreements at issue, through Plaintiff’s underwriters, Steven Mitchell and Keith Peacock.

III. CONCLUSION

For all of the forgoing reasons, Rogers and Forrest renew their requests for dismissal on the basis of *forum non conveniens*, and hereby join in the rationale for complete dismissal advanced by Stanley Munson and Tarlo Lyons.

Respectfully submitted,

/s/ Kevin Dooley Kent

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Dated: November 18, 2004

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of Defendants T. Beauclerc Rogers IV's and David Forrest's Joinder in the Motions to Dismiss of Defendants Stanley Munson and Tarlo Lyons on the theory of *forum non conveniens* was served by U.S. first class mail, postage prepaid, as follows:

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